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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 464

GAINESVILLE UTILITIES DEPARTMENT, CITY OF GAINESVILLE, FLORIDA,

Petitioners,

v.

FLORIDA POWER CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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Many of the arguments advanced by Florida Power and its supporting amici (hereinafter referred to as "Industry Amici") have already been covered in Gainesville's main brief. However, some additional comments thereon may be helpful to the Court in its disposition of the controversy:

1. *Court below applied the wrong standard of review.* Both Florida Power and the Industry Amici would treat the case as if it had been before the Court of Appeals for consideration *de novo* and the issue before this Court was whether the Fifth Circuit had properly sifted and evaluated the evidence. This is apparent from (1) their discussion of the evidence as if there had not been any findings by the Com-

mission based on its evaluation of that evidence, and (2) Florida Power's statement (Br., p. 15) that:

> "The Court of Appeals accurately sifted the facts of the case from the fiction and correctly decided the case on the basis of the equities of the real facts."

It is well established, however, as pointed out in Gainesville's main brief (at pp. 14-18, 23) that the evaluation of the evidence, the construction of statutory language, and the determination of the policy to be followed in order to implement the Congressional purpose, are primarily the responsibility of the regulatory agency, with the function of the courts limited to a determination whether the agency's conclusions have a warrant in the record and a reasonable basis in law.

Just as there is evidence on the record, submitted primarily by Florida Power, which Florida Power now seeks to invoke in support of its position here, there is, as shown in Gainesville's main brief (at pp. 23-37), also extensive evidence supporting the Commission's findings. In these circumstances, the settled test is whether the Commission's findings are supported by substantial evidence—not, as Florida Power and Industry Amici would have it, whether the result reached by the Court of Appeals on the basis of its independent evaluation of the evidence was justified.[1]

Furthermore, it should be pointed out that in their effort to support the result reached by the Court below on the basis of their approach, both Gainesville's opponents have grossly misstated or overstated the evidence as set forth in the record, and have indulged in inferences or conclusions

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[1] Even as an independent evaluation, the Court's opinion would be totally deficient. The Commission's decision is bottomed on the criteria of the Florida Operating Committee and practices of the Florida pool, which utilizes the policy of proportionate responsibility between large and small systems, which policy the Commission refined and adopted in its opinion. The Court below ignores this major aspect of the evidence and the manner in which it is involved in the Commission's policy formulation.

wholly at odds with the evidence and/or the Commission's own findings. Since this Court has neither the responsibility nor the expertise to sort out these invalid assertions, these actions by Gainesville's opponents serve to highlight the basic soundness of the established rule, ignored by the Court below as well as by Gainesville's opponents, requiring deference to the administrative agency with respect to such matters.

2. *Commission's order reflects the realities and complexities of multi-system interconnected operations.* The arrangements among the various members of the Florida power pool to which Gainesville may now have access by virtue of the interconnection with Florida Power directed by the Commission provide, in large part, the answers to most of the arguments made by Florida Power and the Industry Amici. As pointed out in our main brief (at pp. 4-5), the Florida pool in 1965 consisted of five major utilities in Florida, ranging in size from the small City of Orlando, with a 1965 peak customer load of 180 mw, to large Florida Power & Light Company, with a 1965 peak customer load of 2,529 mw, more than 14 times as great. Under the arrangements among these utilities, the total ready reserves of the pool amount of 1-1/2 times the capacity of the largest unit on the line; the spinning reserves equal the capacity of that unit; and the responsibilities for maintaining such reserves are pro-rated among the members on the basis of comparative customer peaks and largest units.[2]

In addition, while each member can call on the others in the event of an emergency, each utility is obligated to respond to such a call only "to the extent that, in the judgment of the Seller, the generation or purchase and delivery of such power and energy will not jeopardize service in the

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[2]The interconnected operating group has subsequently been enlarged by the addition of three municipal utilities with 1965 peaks as follows: Tallahassee, 77 mw; Lakeland, 76 mw; Ft. Pierce, 27 mw. This has been achieved through interconnection agreements (without standby charges) executed with Florida Power, Tampa Electric Company and Florida Power & Light respectively.

system of the Seller"[3] and there is no standby charge for providing such services comparable to that here sought by Florida Power. Moreover, the standard language of the agreements between pool members provides that if the flow between the systems jeopardizes the "customer service or system operation" of one of the systems, it "shall have the right to open the interconnection between the parties."[4] In other words, when the Commission, in applying its policy of proportionate responsibility, required Gainesville to maintain 15% ready reserves and 10% spinning reserves, directed the providing of emergency service on a to-the-extent-available basis, and declined to impose the standby charge sought by Florida Power, the Commission provided arrangements between Gainesville and Florida Power comparable to those among the various members of the Florida pool.

(a) Since the Commission has thus utilized the agreement and operating criteria with respect to the Florida pool in formulating the terms and conditions of the interconnection, it is apparent that, in accordance with the testimony of Gainesville's witnesses (see Gainesville's main brief at pp. 21-29),[5] Florida Power's obligation to provide emergency

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[3]The language quoted in the text appears in the contract between Florida Power and the City of Orlando (Exh. 86, Service Schedule B). The identical language also appears in the contract between Florida Power & Light and the City of Orlando (Exh. 91, Service Schedule B). Similar language also appears, for example, in Section 3;8 of the interconnection agreement between Florida Power and Tampa Electric Company (Exh. 80, Section 3.8) and Article IV, Section A, of the interconnection agreement between Florida Power & Light and the City of Jacksonville (Exh. 90, p. 8). For the convenience of the Court, these provisions and the text of Service Schedule B are reproduced in Appendices A-1, A-2 and A-3, *infra*.

[4]Exhs. 86 and 91, Section 3.3; Exh. 80, Section 3.1.

[5]Florida Power's (*e.g.*, Br., pp. 3, 7, 16) heavy emphasis on the oral argument of Gainesville's counsel before the Commission is one based on an incomplete quotation from his argument. Immediately following Florida Power's quotation, Gainesville's counsel stated (see F.P. Br. App., p 2a):

service to Gainesville or to act as the "fire department" for Gainesville (F.P. Br., pp. 7-8, 12), is intended to be no greater than its obligation to provide such services to other members of the pool. Accordingly, contrary to the argument of Florida Power (Br., pp. 7-8, 10-11, 16, 18-19, 23) and the Industry Amici (Br., pp. 5, 8), Florida Power has no obligation to provide Gainesville with instantaneous emergency service at all times as a matter either of Commission edict or of "natural" or "physical laws."

Florida Power's argument (Br., pp. 18-19) that the Commission has required the switch to be closed[6] at all times confuses the Commission's reference to *interconnection facilities* themselves (R. I. 375; see also R. I. 376) with the *usage* to which these facilities are to be put. The Commission held that it was not ordering Florida Power to provide firm service (R. I 363); it expressly left control of the "electrical flow between the system to complete * * * emergency service to * * * the system dispatchers" (R. I 359) and they in turn are supervised by "an operating subcom-

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> "We are saying if we have trouble and *you have spare capacity*, you help us, and we say in reply that we will make available to you all the *spare capacity* we have when you are in trouble."
>
> * * *
>
> "* * * The point is, it is on a *when, as and if basis,* they make it available, and [if] they don't have it, they don't have to make it available to us." (Emphasis supplied.)

This statement, together with the testimony of Gainesville's witness Benson quoted in our main brief (at p. 28), demonstrates the invalidity of the Industry Amici's sweeping assertion (Br., p. 8) that:

> "All witnesses agreed that, upon interconnection, standby capacity equal to Gainesville's entire average load would be instantaneously available at all times to Gainesville from Florida Power."

[6]When a switch is "closed," the circuit is closed and power may flow through the connection. When a switch is "open," the circuit is broken and power cannot flow.

mittee to be responsible for the day-to-day operations . . . such as operating procedures . . ." (R. I 379). These negate the existence of any Commission intent to ignore the practice of the Florida pool by requiring the interconnection to be operated "closed" at all times irrespective of the impact upon Florida Power's ability to serve its own customers. The Commission's order thus does not preclude Florida Power from opening the switch if needed to protect service to its customers.

(b) The further practice of the Florida pool of not including a standby charge in any of the contracts voluntarily negotiated with the other systems with which it is interconnected (R. I 367) also disposes of the contentions of Florida Power (Br., pp. 10, 13-14, 16-17) and Industry Amici (Br. pp. 7-9, 16-17) in support of such a charge Moreover, since the Commission did not impose any firm obligation upon Florida Power, the assessment of such a charge plainly would not be cost justified. The contrary arguments of Florida Power and of Industry Amici completely disregard the fact that the same argument were made to, and rejected by, the Commission (see R. I 366-67). There is no showing here–other than the *ipse dixit* of our opponents–that the Commission's finding is not supported by substantial evidence.[7]

[7]The Commission's Opinion on Rehearing also fully deals with the two instances in which, according to Florida Power (Br., pp. 26-27), Florida Power effected special arrangements for monetary compensation because of the lack of reciprocity in service benefits. As the Commission there points out (R. I 414-415), neither situation resembles the instant *Gainesville* case.

Likewise irrelevant are the Southeastern Power Administration (SEPA) and other cases cited at pages 31-32 of Florida Power's brief, as are the Southwestern Power Administration cases cited at pages 13-14 of the Industry Amici brief. Each of these cases involved a firm obligation to provide emergency service; accordingly, a standby charge was not only appropriate but required under standard ratemaking principles. See also Commission Brief in No. 469, at p. 23. The fact (F.P. Br., p. 32) that the SEPA obligation to provide firm standby service ran to three customers, rather than only one, does

In this regard, it is noteworthy that, in addition to requiring Gainesville to meet the reserve requirements of the Florida pool and to pay all the costs of the interconnection (R. I 363, 368; see also F. P. Br., p. 18), the Commission's order requires Gainesville to pay—in addition to an energy charge—a demand charge of 5¢ per kw per day if the emergency service is provided for more than 60 minutes (R. I 377-78). Thus, should Gainesville need emergency service from Florida Power for more than 60 minutes, Gainesville will provide Florida Power with material revenues in excess of any costs incurred for such service.[8]

(c) The disparity in the size, for example, between Florida Power & Light and Orlando, both members of the Florida pool (see *supra*, p. 3), coupled with Florida Power's recognition (Br., p. 26) that there is mutuality of benefits among the present members of the Florida pool, answers the arguments of Florida Power (Br., pp. 9-10, 13-14, 16, 21-24, 41-43) and of the Industry Amici (Br., pp. 11-12) (as well as the holding of the Fifth Circuit) that benefits from the interconnection between a large utility and a small one flow only to the latter.

These arguments also overlook the facts, as far as the Gainesville-Florida Power interconnection is concerned, as pointed out in Gainesville's main brief (at pp. 32-35), that (1) Florida Power's system includes small units as well as large ones and its customers are spread over a wide geographical area;[9] (2) while some of its small units are usually held in

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not detract from the fact that the firm obligation still required the setting aside of capacity to meet the emergency requirements of those customers.

[8]In urging that emergency service of 50 mw for one hour represents only a $200 transaction (F.P. Br., p. 12, fn. 14), Florida Power ignores the additional $2,500 per day demand charge to which it would be entitled should it provide Gainesville with 50 mw of emergency service for more than 60 minutes.

[9]The claim (F.P. Br., pp. 36-38, 41); Ind. Am. Br., pp. 6, 9-10) that the interconnection would not enhance the reliability of Florida Power's system, either generally or specifically in the Gainesville area,

reserve for peak periods (F.P. Br., p. 5), its need for outside emergency assistance is most likely to arise during such peaks; at other times, when the demands upon its system are below peak, the company usually has ample reserves of its own in the event of a forced outage of a unit on the line.

The Florida Power and Industry Amici briefs seek to convey the idea of the invulnerability of large utility systems and their lack of need for assistance from smaller systems; and the Court below apparently adopted this view—contrary to the findings and conclusions of the Commission. The facts are otherwise. This has been written large in the last year, for example, when during both summer and winter, the major interconnected east coast utilities have had insufficient capacity to discharge properly their utility obligations and have had to resort to voltage reductions (brown-outs), to selective load shedding (black-outs), and to operation with insufficient system reserves.

Consolidated Edison Company of New York is the largest electric utility in the country on the basis of peak load and has been unable to provide satisfactory service during its most recent summer and winter peaks because of outages of generating units. It has turned to every available interconnected source for assistance and has purchased capacity from small utilities in blocks of 20,000 to 50,000 kw, the amounts which Gainesville can supply most of the year into an interconnected system. During January and February, 1971, Consolidated Edison, due to the breakdown of some of its major generators, was unable to furnish full

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ignores the Commission's contrary findings (R. I 366, 414) which are supported by substantial evidence. See, *e.g.*, R. I 221-222. Similarly, the assertion of Industry Amici (Br., p. 9) that Gainesville's units are antiquated and inefficient is *not* supported by evidence cited by it. To the contrary the facts are that Gainesville's generating units are at least as good, if not better, than those of equivalent size on Florida Power's own system. See R. I 219-220, 366; see also Gainesville's main brief at p. 33, fn. 24.

service to its customers even though its load was at only 5,637 mw as compared to its summer peak of 7,266 mw (*New York Times*, Feb. 5, 1971, p. 35).[10] In order to pull through, even after voltage reductions and load shedding, Consolidated Edison purchased capacity wherever available including 40 mw from Central Hudson Gas and Electric Corporation and 25 mw from Orange and Rockland Utilities, Inc. (*Electrical Week*, Jan. 25, 1971, pp. 4-5). In early February, it was purchasing blocks of 40, 50 and 55 mw from other utilities (*New York Times*, Feb. 4, 1971, p. 61; Feb. 5, 1971, p. 35).[11]

Plainly, therefore, Gainesville's ability to make available to Florida Power up to the full 60 mw capacity of the interconnection during certain periods of the year, as found by the Commission (R. I 411-12),[12] would similarly have "meaning [and] significance" (F.P. Br., p. 23) to Florida Power should it be confronted with a comparable emergency.[13] See also, brief *amicus curiae* (pp. 16-17) filed by

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[10]For the convenience of the Court the news articles referenced herein are reproduced in Appendices B-1 through B-4, *infra*.

[11]Consolidated Edison's experience generally repeated last summer's crisis which required on one day the suspension of subway service. In searching for outside assistance "* * * the company * * * managed to get 20,000 more kilowatts from the Orange and Rockland Utilities ...." (*New York Times*, July 30, 1970, p. 22).

[12]Florida Power's claim (Br., pp. 9, 23) that Gainesville could make only about 11.5 mw available in the event of an emergency on the Florida Power system is inconsistent with the Commission's finding referred to in the text.

[13]As a corollary when a small system joins an interconnected group it is subjected to the additional risk of having its operations interrupted when a major disturbance occurs on one of the larger systems. This is illustrated by the disturbance on January 28, 1969 when the loss of the Port Everglades generating station of Florida Power & Light resulted in the loss of load by each of the other interconnected systems, including the City of Orlando which was required to shed 42 megawatts of customer load, and the City of Jacksonville, 20 megawatts (*Report on Electrical Power System Disturbances Affecting the Florida Peninsula*, January 28, 1969, FPC July 1969, p. 1).

the American Public Power Association in support of Gainesville's petition for certiorari (No. 464) for examples of how small utilities can provide benefits to larger systems.

(d) The fact that, by its policy of proportionate responsibility, the Commission was seeking to place Gainesville on a par generally with the present members of the Florida pool, also disposes of Florida Power's further argument that the loss of load probability studies of the Commission's staff were "unrealistic" because based on the assumption that Florida Power operated in isolation, whereas in fact "Florida Power has many interconnections with five other utilities" (F.P. Br., pp. 36-38). To have taken these interconnections into account in making these studies while treating Gainesville on an isolated basis would in effect have penalized Gainesville for being the last one on the interconnected system, a result which the Commission policy of proportionate responsibility was explicitly intended to avoid.

The invalidity of these arguments of Gainesville's opponents is further demonstrated by the fact noted by Commission Staff witness Braitman, on the basis of his study of the pooling agreements on file with the Commission[14] (R. II 426-429), that each member of such pools is required to have sufficient transmission capacity to traverse its service area and to deliver its generating capacity reserve obligation to the transmission grid and no attempt is made to apportion transmission investment responsibility among pool members or to require the participants to pay a portion of the annual costs of the pool's transmission grids (R. II 428-29). And since, as noted *supra*, p. 7 (see also

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[14]The Industry Amici are in error when they urge (Br., pp. 10-12, 16) that Mr. Braitman based his testimony on a review of only the 23 agreements listed in Exhibit 99. The fact is that, of the 16 multiparty pool arrangements falling within his definition of a pool and covering approximately 50% of the total installed generation in the continental United States, Mr. Braitman reviewed the 14 on file with the Commission (see R. II 426-427; Exhibit 95).

Gainesville's main brief at pp. 31-37), (1) Gainesville is to bear the entire cost of the interconnection without any cost to Florida Power (see R. I 361, 368), and (2) the interconnection will provide substantial financial and electrical benefits to Florida Power, there is no merit in the Industry Amici's claim (Br., p. 19) that "it is only right" to require Gainesville to make additional payments because it is the last one on the network.

(e) Finally, by tailoring the terms and conditions of the interconnection to conform generally to those incorporated in the voluntary agreements entered into by the various members of the Florida pool, it is obvious, despite the arguments of Florida Power (F.P. Br., pp. 24-28) and Industry Amici (Br., pp. 11-15, 18-19), that the Commission has followed the industry practice in Florida with respect to these matters. As shown, *supra,* the Commission's order herein also conforms to the practice generally throughout the industry.

In this regard, we wish to make it clear (1) that we do not concede that the industry practice is binding upon the Commission and (2) that we recognize that there are cases in which, as a part of the price of providing an interconnection, large utilities have obtained from the smaller utilities greater concessions than those which they would be entitled to under the Commission's order here under review. Not every small utility can undergo the time and expense of prolonged litigation such as Gainesville has been going through since 1965 when it filed its complaint with the Commission against Florida Power, in order to obtain its rights under the Federal Power Act. It is the Commission's responsibility to establish appropriate and reasonable terms and conditions for interconnection.

3. *Florida Power's reliance on Crisp County settlement is unjustifed.* Finally, there is no justification for Florida Power's attack (Br., p. 28, fn. 21; pp. 30-31) upon Gainesville's citation of the Commission's decision in *Crisp County Power Commission v. Georgia Power Company,* 42 FPC

1179 (1968). While the Commission's decision admittedly was designated as tentative, the Commission at the same time converted the emergency interconnection previously directed into a permanent one (see 42 FPC at 1180), and thereafter, by further order, directed a second permanent interconnection at another location in accordance with its original opinion. (37 FPC 1103; see also 42 FPC at 1181). Since, in addition, no exceptions were taken with regard to the necessity of an interconnection (see 37 FPC at 1103), it is apparent that at least the portion of the Commission's original opinion relating to the appropriateness of the interconnection (42 FPC at 1187-1190)—the portion relied upon in Gainesville's main brief (at pp. 22, 31)—was unaffected by the settlement.

Further, contrary to Florida Power's argument (Br., p. 30) the Crisp County settlement agreement does not require "Crisp County to compensate Georgia Power for standby service by means of capacity charges" *as far as emergency service is concerned.* Section 5.3 of that agreement dealing with emergency service not only provides for each party to render such service to the other "to the degree that it can do so without jeopardizing service to its own customers," but establishes only a charge for the energy provided, i.e., "at a rate of ten mills ($0.010) per kilowatt-hour***."

Florida Power apparently has confused emergency service with the purchase of capacity dealt with in Section 5.1 of the agreement. Section 4.4 of the agreement, providing for the maintenance of a generating reserve equal to 15% of peak load, also permits Crisp County to satisfy this obligation "by installed generating resources and/or *purchases from others.*" Section 5.1 provides the rate to be paid for any capacity purchased from Georgia Power Company in the event that Crisp County undertakes to discharge its reserve obligation in this manner. It is a mutual undertaking and thus also fixes the rate at which Georgia Power Company would purchase from Crisp County if the former were short on reserves.

CONCLUSION

For the foregoing reasons, as well as those set out in our main brief, this Court should set aside that portion of the judgment of the Court of Appeals which rejects the Commission's determination of the "compensation * * * reasonably due" under Section 202(b) of the Federal Power Act and direct the entry of an order affirming in full the order of the Commission.

Respectfully submitted,

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APPENDIX A-1

Contract for Interchange Service between Florida Power Corporation and Orlando Utilities Commission, dated September 26, 1961, Service Schedule B, pp. 1-3.

(Identical provisions appear in Service Schedule B, Contract for Interchange Service between Florida Power and Light Company and Orlando Utilities Commission)

SERVICE SCHEDULE B
EMERGENCY INTERCHANGE SERVICE

This Service Schedule B is agreed to be effective under, and a part of, the Interchange Service Contract dated Sept. 26, 1961 between the Florida Power Corporation and the Orlando Utilities Commission, hereinafter referred to as the "CONTRACT".

Section B0 - Term: The term of this Service Schedule B shall be concurrent with and identical to the term stipulated in Section 1.1 of the CONTRACT.

Section B1 - Emergency Interchange Service: Emergency Interchange Service, for the purpose of this schedule, shall mean electric power and energy supplied by one party (Seller) to the other party (Buyer) under emergency conditions during which such other party is temporarily unable to obtain its required power and energy from normally available sources. It is agreed that a condition of deficiency in power supply occasioned by shortage of system facilities, water, fuel or other supplies, which has resulted from failure of the party affected to follow recognized good engineering practice, shall not be considered an emergency condition for the purposes of this Service Schedule B.

When either party, in an emergency, shall request emergency interchange service which the other is in a position

to furnish, the Seller shall furnish the requested emergency interchange service from all available sources as needed to the extent that, in the judgment of the Seller, the generation or purchase and the delivery of such power and energy will not jeopardize service in the system of the Seller.

It is understood and agreed that the power and energy received by one party from the other under emergency conditions when the period of such receipt of such power and energy is less than sixty (60) minutes shall be classified as unintentional interchange of energy and shall be treated as set forth in Section 4.2, Article IV, of the CONTRACT, of which this Service Schedule B is a part.

If the taking hereunder of power and energy during an emergency shall be for a period of sixty (60) minutes or more, all of the power and energy taken during the emergency shall be treated as emergency interchange service, as provided for under this Service Schedule B.

It is also understood and agreed that the duration of emergency interchange service as provided for under this Service Schedule B shall not exceed 30 consecutive days for any single emergency.

Section B 2 - Payment for Emergency Interchange Service: Emergency interchange service received by either party shall, at the option of the party supplying such emergency interchange service, either be returned in kind, at times mutually agreed upon (when the value of power and energy to the party which supplied the emergency interchange service is substantially equal to the cost of the corresponding power and energy delivered), or be paid for by the Buyer at the following rate:

> An energy charge per kwhr equal to 3.0 mills plus the amount of a fuel cost adjustment determined as set out in Section A6 of Schedule A plus the amount of a transmission loss cost adjustment as set out in Section A7 of Schedule A for all kwhr delivered. The energy charge per kwhr shall be rounded out to the nearest $.00005 (5/100 of a mill).

If it becomes necessary for the Seller of emergency interchange service to purchase power and energy from OTHER SYSTEMS, in order to supply the emergency interchange service needs of the Buyer, at a cost to the Seller which Seller feels is in excess of corresponding costs on the system of the Seller, then mutually agreeable adjustments to the rate shall be determined by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Service Schedule B to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

ATTEST: FLORIDA POWER CORPORATION

By [Signature Illegible] Secretary — By [Signature Illegible] President

ATTEST: ORLANDO UTILITIES COMMISSION

By [Signature Illegible] Secretary — By [Signature Illegible] President

APPENDIX A-2

Interchange Agreement between Florida Power Corporation and Tampa Electric Company, dated September 1, 1957, Section 3.8, p. 6.

Section 3.8 Reciprocal Emergency Standby: In the event of an emergency arising from the failure of or defects in the lines or equipment of one of the parties, the other will, to the extent possible in its judgment consistent with its other obligations, so operate its facilities as to enable the party suffering the emergency to carry out its service obligations to the fullest extent possible. Energy received by either party shall, at the option of the party supplying such emergency energy, either be returned, in kind and at times mutually agreed upon (when the value of energy to the party which supplied the emergency energy is substantially equal to the cost of the corresponding energy delivered), or be paid for at a rate as determined in accordance with the provisions of Section 4.2 (b), (c), and (d). Emergency capacity and energy obtained from a third party for the account of either party hereto shall be paid for at a rate in accordance with the provisions of Section 4.3 hereof.

APPENDIX A-3

Agreement dated March 19, 1963 between City of Jacksonville and Florida Power and Light Company, Article IV, Section A (pertinent part).

A. *Emergency or Temporary Power*

In the event of failure of equipment on the system of either party or due to temporary loads either party shall desire power from the other party, said other party shall furnish the same within the limitations of its existing facilities, if the furnishing of such power shall not jeopardize the service and reliability of its own loads. The party requiring such power shall notify the other party of its requirements, stating the amount of power required, and the period during which such power will be needed. The party receiving such request for power shall determine if such power can be made available without jeopardizing the service of its own system and, if such power can be made available, shall advise the party making such request that the said power will be made available during the period specified in the request.

APPENDIX B-1

THE NEW YORK TIMES, JULY 30, 1970

Storms Cut Power Needs But Also Knock Out Lines

By PETER KIHSS

Showers on another 90-degree day came to the aid of New York City's beleaguered electric power supply yesterday as hot and humid weather elsewhere reduced supplies of power from out of town.

Temperatures here went into the 90's for the third consecutive day and, for the third consecutive day, Consolidated Edison Company reduced voltages to stretch its capacity. As it had the day before, the utility also appealed to the public as well as to its major customers to save on power. Upstate utilities also reduced voltages to help Consolidated Edison.

But while afternoon showers drove down temperatures 10 degrees in little more than an hour and the cooling effects held down the demand for electric power, the storms also knocked out power lines in the Bronx, Queens, Staten Island and Westchester County.

Nearly 10,000 families suffered blackouts for varying periods as a result. And flooding —apparently from hydrants opened earlier by children during sweltering heat and then swelled by the rains—knocked out subway service during the homegoing afternoon rush hours for the Pelham Bay subway line, used by 50,000 riders.

Earlier, a City Hall conference had led to revision of power conservation priorities, with Mayor Lindsay and Charles F. Luce, board chairman of Consolidated Edison, agreeing that power would be kept available to run subways for peak loads.

This followed Tuesday afternoon's disruption of subway schedules, when the Transit Authority at the utility's request moved to cut the number of afternoon rush-hour trains up to a third in a power-saving slowdown.

Members of the Mayor's Emergency Control Board said they thought automobile traffic into the city had increased yesterday morning, possibly involving commuters who feared subway delays or even breakdowns.

Witl. the Mayor appealing for reduced driving to hold down air pollution in the coincidental atmospheric crisis, Mr. Luce said Consolidated Edison would not ask for subway power savings until other steps were taken. These, he said, could include even an 8 per cent voltage reduction—a last conservation move before possible

blacking out of outlying residential areas.

Yesterday's power demand reached its hour-long high of 7,195,000 kilowatts between 11 A. M. and noon, surging briefly to 77,245,000 at 11:30 A. M. The hour-long peaks were 7,241,000 kilowatts on Monday and 7,248,000 Tuesday.

The temperature - humidity index rose to a soggy 81 at noon, one point above the mark at which the Weather Bureau considers everyone to feel uncomfortable. The temperature reached 90 at 12:30 P. M.

Minus a million-kilowatt Ravenswood, Queens, generator since July 21 and a 265,000-kilowatt Indian Point unit since last month, Consolidated Edison reported its own available power capacity at 7 A. M. was only 6,098,000 kilowatts.

The electricity it was able to import at that hour from as far away as Canada and the Tennessee Valley totaled 1,208,000 kilowatts, giving an available supply from all sources then of 7,306,000.

Mr. Luce said this was 300,000 to 500,000 kilowatts less than the company had sought from out of town, since outside utilities were also faced with increasing demands in sweltering weather along the Eastern Seaboard.

Appeals to the Public

At 10:05 A. M., Consolidated Edison reduced its voltages by 3 per cent to stretch its own capacity. It also made a public appeal for reducing nonessential uses. The 10 A. M. demand had risen to 7,230,000 kilowatts.

To assure delivery of power ordered by Consolidated Edison five upstate utilities belonging to the New York Power Poo also reduced voltages at 1(A.M. by 3 and 5 per cent in the areas east of Utica and south of Albany, out to the end of Long Island.

The drain on Consolidated Edison in New York City and Westchester went down to 7,170,000 kilowatts at 10:3(A.M., but started moving up again at 11 A.M. to 7,179,00(and at 11:30 A.M. to 7,245,000

Power Cut Off in Queens

At noon, the company reported it had managed to get 20,00(more kilowatts from the Orange and Rockland Utilities and 60,000 from the Pennsylvania-New Jersey-Maryland grid system, and to bring a Hell Gate unit that had been briefly out. The capacity rose to 7,471,000.

At 1:43 P.M., Consolidated introduced a 5 per cent reduction in voltage in four boroughs, and began a 3 per cent cut in Queens, which had escaped the morning trim.

Meanwhile, the skies darkened with oncoming rains. The metropolitan area both cooled and reeled under the impact of showers.

A Consolidated Edison report said a storm hit Laurelton, Queens, at 12:40 P.M., tearing

Daily Top Power Output By Con Ed in Heat Wave

Following are the peak power outputs handled by Consolidated Edison during the heat wave that began Friday, with maximum temperatures and temperature-humidity-index levels. The Weather Bureau says almost everybody is uncomfortable when the index reaches 80.

	Peak power load in kilowatts	Highest Temp.	Highest Temp.-Humidity Index
Friday	6,822,000	88	78
Saturday	5,266,000	89	80
Sunday	4,751,000	85	78
Monday	7,241,000	91	80
Tuesday	7,248,000	94	82
Wednesday	7,195,000	90	81

down a 4,000-volt feeder and cutting off electricity for 1,800 customers until 3:20 P.M.

The rains in Manhattan held off until 2:35 P.M., the Weather Bureau reported. A shower then poured down a third of an inch of rain by 3:40 P.M., while temperatures dropped from 87 at 2 P.M. to 77 at 4 P.M. Intermittent showers resumed later.

The power demand went down—7,203,000 kilowats at noon, 7,197,000 at 1 P.M., 7,150,000 at 2 P.M., 7,169,000 at 3 P.M., 6,994,000 at 4 P.M., 6,848,000 at 5 P.M. And at 5 P.M., Consolidated Edison announced the end of the day's voltage reduction and the need for the public conservation efforts.

Meanwhile, however, 1,000 customers in the Riverdale section of the Bronx were blacked out by storm damage to a 4,000-volt feeder line from 3:36 P.M. to 5:08 P.M.

In Staten Island, as many as 4,000 families lost power in various areas, including 1,000 from 3:19 P.M. to 5:27 P.M. in the Heartland Village in New Springville, where lightning struck a transformer and set it afire.

In Westchester, 1,100 families were blacked out in Fleetwood from 3:20 P.M. to 5:45 P.M. when the storms damaged a 13,000-volt feeder.

Phones Out in White Plains

In White Plains, 1,800 families lost electric power at 3:48 P.M. during flooding in the Mamaroneck Avenue and Main Street section. Several hundred telephones also went out of service because of wet cables.

There was flooding at the East 149th Street station of the IRT's Pelham Bay line, and power was knocked out at 3:37 P.M. Water poured in to a depth of nearly five feet to the north at Longwood Avenue, on a down grade.

While three northbound trains pulled up bumper to bumper to enable passengers to get out at the Longwood Avenue station, the Transit Authority announced the discontinuance of service betwen East 138th Street and Hunts Point at 3:40 P.M.

At 4:15 P. M., the interruption was widened to take in a 13-station stretch from 125th Street in Manhattan to East 177th Street in the Bronx. Passengers were offered free transfers to buses.

Workers restored power a number of times in the next hour or so, only to find water still pouring in despite the end of the rain. With the rush-hour trains completely disrupted, the continuing trouble was then traced to open fire hydrants.

Disruptions In Jersey

Afternoon electrical storms were reported also to have temporarily disrupted power supplies in New Jersey in Bergen, Union, Essex and Middlesex County areas served by the Public Service Electric and Gas Company.

The critical power problem faced prolongation with weather forecasts of 94-degree temperatures today and the mid-90's for tomorrow. The Weather Bureau's extended outlook for Saturday through Monday indicated temperatures continuing in the upper 80's, with occasional showers and thunderstorms.

Mayor Lindsay, at a news conference at City Hall, said:

"I join with Con Ed in asking the full cooperation of New York's citizens in reducing their consumption. Air-conditioners should be shut off.

"Put off using washers and dryers until the weekend. Shut off all nonessential electrical equipment.

"The city is doing its share. All agencies are following procedures for conservation of power. Agency chiefs may use discretion as to safety and comfort of municipal employes in determining work hours."

Cutback in New England

New England power companies reduced their voltage by 5 per cent during the day in their third consecutive day of such actions during a heat wave. The cutback was described as aimed in part at aiding the New York situation.

According to the Consolidated Edison Company, its power imports yesterday included 96,000 kilowatts from New England.

Others included 305,000 from the Ontario Hydro Electric Commission; 300,000 from the Rochester Gas and Electric Corporation; 220,000 from the New York State Electric and Gas Corporation; 200,000 from the American Electric Power system, representing a supply released by the Atomic Energy Commission; 60,000 from the Pennsylvania-New Jersey-Maryland grid, and 20,000 from Orange and Rockland Utilities.

APPENDIX B-2

THE NEW YORK TIMES, THURSDAY, FEBRUARY 4, 1971

Con Edison Cuts Voltage By 5% for 3d Straight Day

By PETER KIHSS

For the third consecutive day, the Consolidated Edison Company yesterday imposed a 5 per cent voltage reduction to stretch its power supply for extra-heavy heating demands.

But after four lingering days of below-freezing temperatures, the cold air mass began moving out to sea, sugesting an easing of problems today. Yesterday's electric supply was also aided by return of a 16,-1kilowatt Hell Gate generator, on which repairs were completed at 12:15 A.M.

For the longer range, Joseph C. Swidler, chairman of the State Public Service Commission, set up staff and utility meetings to canvass statewide means for "maximizing the power supply" and "spreading the risk" to enable the city's beleaguered utility to carry out essential maintenance on burdened major units.

The commission is also convening a conference at 1 A.M. today at its office at 199 Church Street for the state's major utilities, as well as local government officials. The conference is intended to review companies' emergency plans to start developing means for avoiding area blackouts such as occurred last summer when voltage savings still could not cope with power shortages and high demands.

Other States Affected

Yesterday was the seventh day since Jan. 18 in which statewide voltage reductions were invoked to help Consolidated Edison, which has had two major generators—about a seventh of its own capacity—shut down for more than six months.

It was also the third consecutive day of 5 per cent voltage reductions by the Pennsylvania-New Jersey-Maryland grid, which has been unable to use an 82,-kilowatt Keystone plant in Pennsylvania since a July 12 boiler explosion.

In Washington, the Federal Power Commission said the winter power crisis began Jan. 14 when the New England power pool had to make the first of its eight voltage reductions. The Commonwealth Edison Company, in Chicago, has had one such cut.

Yesterday's coldest temperature here — 8 degrees — lasted more than seven hours, starting at 1:50 A.M. At 8 A.M., Consolidated Edison cut voltage 5 per cent, and the New York Power Pool supported this with a similar reduction by five other member companies at 10 A.M. and a sixth at 4 P.M.

At 5 P.M., the start of the usual winter peak hourly load, Consolidated Edison reported 5,932,000 kilowatts available, including 854,000 brought in from outside the city—500,000

from Niagara Mohawk, 170,000 from Rochester Gas and Electric, 89,000 from the Quebec Hydroelectric Commission, 55,000 from Long Island Lighting and 40,000 from New York State Electric and Gas.

Westchester Unit

For the next hour, the load from motors on heating units, added to the normal demand for lighting with the advent of dark, averaged5,590,000 kilowatts. This indicated a reserve of not quite 6 per cent, compared with the 20 per cent utility engineers hope for in normal times.

At 6:32 P.M., the utility trimmed its voltage reduction to 3 per cent and at 7:04 P.M. reported full power restored.

The day saw two localized power troubles. InWestchester County service to 1,260 customers in Yonkers, Bronxville and Tuckahoe was knocked out about 2:30 P.M. when cables from the Dunwoodie substation were damaged by provate contractors, according to Consolidated Edison.

Lawrence Hospital in Bronxville resorted to an emergency generator. Most customers had service restored at 5:08 P.M., but the hospital and nine apartment houses were still cut off late into the evening.

In the city, Dean Mitchell I. Ginsberg of the Columbia University School of Social Work, saw the lights go off in his office at 440 West 110th Street just after 9:30 A. M. soon after, all the lights in the building, also used by the School of Arts, went out, along with the elevators and all of the typewriters, which are electric.

Consolidated Edison, which has a substation in the next building, said a contractor had knocked out a 13,000-volt feeder. Dean Ginsberg sent most of his staff home at 1 P. M. and the rest at 3 P.M. as repairs went on into the night.

The Automobile Club of New York said that because of the continuing cold weather calls for its emergency road service had tripled during the last three days to more than 14,000.

The city's Department of Rent and Housing Maintenance reported complaints of lack of heat had risen to 2,406 last Monday, 3,024 Tuesday and 3,150 yesterday for the 24-hour periods ending at 4 P.M.

APPENDIX B-3

THE NEW YORK TIMES, FRIDAY, FEBRUARY 5, 1971

Power Companies to Report on Crises

By PETER KIHSS

The Public Serivce Commission called on the state's seven major electric utility companies yesterday to report by March 1 on their plans for reducing electric loads in crises—and on the effect such moves have on consumers.

The impact of voltage cuts or actual neighborhood blackouts on food in freezers and the potential damage to equipment owned by consumers were among questions raised by Howard Read, staff counsel for the state commission, during a conference at 199 Church Street.

Commissioner William K. Jones, presiding, asked the city government to report on its plans to carry on operations of city-owned hospitals, police and fire stations and traffic and streets lights in case of power curtailments. He scheduled public hearings to start March 15.

Rising, although still below-freezing temperatures—ranging between 20 degrees at 6:30 A.M. and 27 at 2:20 P.M.—eased electric demands for heating equipment motors enough to avoid voltage reduction here and upstate yesterday for the first time since last Monday.

The beleagured Consolidated Edison Company also regained use of its 260,000-kilowatt Arthur Kill generator, after having been shut for repairs since 9:47 P.M. Monday.

As a result, Consolidated Edison had 5,863,000 kilowatts available to meet its winter peak-hour demand, starting at 5 P.M. This capacity included purchases of 440,000 from Niagara Mohawk, 90,000 from Rochester Gas & Electric, and 89,000 from the Quebec and 50,000 from the Ontario hydro-electric commissions.

The hour-long average used from 5 to 6 P.M. was reported as 5,834,000 kilowatts, indicating a reserve of only 0.5 per cent. This compared with peak gross loads of 5,685,000 last Monday, a zero-reserve hour; 5,597,000 Tuesday and 5,590,000 Wednesaay. All three were days when 5 per cent voltage reductions were estimated to be saving 207,000 kilowatts and major users were holding down as well.

Yesterday the company said these peak-use figures were gross demands, including its own internal use—197,000 kilowatts during the peak hour. The net demand was described as 5,637,000, comparing with a recordwinter peak of 5,869,000 last Dec. 22, also a net figure. The summer peak here was 7,266,000 on July 17, 1969.

At the Public Service Commission conference, the utilities were asked to describe power cuts and effects starting since Jan. 1, 1970, in efforts to stretch tight power supplies. They were also asked to report advantages and disadvantages of particular methods, how priorities were established and the result of appeals to the public.

Eugene Margolis, assistant corporation counsel, representing New York City, proposed an inquiry on whether the companies were purchasing all power available before they curtailed service.

Utility officials have contended that voltage reductions have no noticeable effect until they reach 8 per cent, when lights dim. Health officials have indicated food in freezers remains safe for some hours after power has been shut down.

Appliances and other electric equipment are supposed to be built with tolerances for as much as 10 per cent in voltage variations. Public Service Commission officials say their voltage meters, put on lines when complaints are made, tend to show variations of generally not more than 2 to 4 points.

CON ED AGAIN ON BRINK; ESTIMATED RESERVES CALLED 'PAPER FIGURES'

The bone-chilling temperatures that swept the Northeast early last week put electric utilities in New York and New England in a precarious power-supply situation with Con Edison just one step short of a public appeal for all customers to curtail power use. High usage resulting from the cold weather, coming on top of a raft of forced outages of generating equipment (3,700 Mw on the Con Ed system alone), whittled estimated generating reserves to the vanishing point, forcing the New York and New England power pools to reduce voltage 5% to hold their systems together. New York PSC chairman Joseph Swidler asserted that the estimated reserves, which New York utilities had forecast to be 33.2% at winter peak, "are unrealistic, soft figures" (a PSC staffer termed them "paper figures"), but refrained from other observations "until we get a little deeper into the planning of the electric utilities." The pool's net capability is 21,700 Mw.

Knowledgeable utility officials around the country were surprised that the summer-peaking pool could be caught short in the middle of winter. Its Monday peak demand was only 15,495 Mw -- about 1,200 Mw less than it had experienced just a month previously (Dec. 22) and 1,500 Mw less than it had weathered last July 22. What is more, a mere 200 Mw was down for scheduled maintenance at the beginning of last week.

New York Power Pool officials knew on the morning of Monday, Jan. 18, that they faced another tight one with upstate temperatures below zero, New York City temperatures in the low teens, and more than 25% (5,500 Mw) of the state's capacity on forced outage. Con Ed, which has about 40% of the generating capacity in the state, was the focus of the trouble with its 1,000-Mw Ravenswood-3 (Big Allis) and the 256-Mw Indian Point nuclear plant still undergoing long-term repairs and some 2,450 Mw down or de-rated in other units. The rising loads and the mid-day loss of Homer City-1 (in which the New York pool has a 300-Mw share) moved pool officials to sound an alert for a 5% voltage reduction at 1 p.m. With loads still rising, the reduction was put into effect at 2:30 p.m. and Con Ed began calling on its large customers to reduce non-essential uses of power about 3 p.m.

With the help of 420-Mw of capacity shipped in from the west (40 Mw from Cleveland Electric Illuminating, 300 Mw from the Allegheny Power System, and 80 Mw from Ohio Electric) the New York pool was able to pull through. But all of the pool resources were strained to keep the Con Ed system on line. At the height of the crisis (between 4 and 5 p.m.), Con Ed was drawing nearly 700 Mw from its neighbors in the pool (400 Mw from Long Island Lighting, 140 from Rochester Gas & Electric, 90 from Orange & Rockland, 40 from Central Hudson, and 25 from New York State Gas & Electric) in addition to the 420 Mw coming from the west. The voltage reduction and Con Ed's appeal for curtailment were cancelled at 7 p.m. Monday.

When Con Ed hit its peak of the afternoon, 5,609 Mw, with the voltage reduction (estimated at 270 Mw) and voluntary curtailment by large customers in effect, the capacity available from its own system was a bare 5,035 Mw. Purchases of 1,120 Mw helped meet the reduced load and gave it a 510 Mw contingency reserve. Con Ed and the other New York companies were able to weather another two days of the cold spell, which began breaking Wednesday night, without resort to a voltage reduction as some smaller units were restored to service and additional power became available from the west and New England . However, Con Ed and two other downstate New York utilities along with the New England pool were forced to again trim voltage 5% from 4 to 6 p.m. Thurs-

HOW VALID ARE RESERVE ESTIMATES?

Last week's crisis in New York again emphasizes the weakness of estimated reserve figures, whether calculated by the utilities or government agencies. The utilities in New York had estimated a 33.2% reserve for this winter's peak. The Federal Power Commission had calculated a 32.5% reserve for the New York pool. It is chairman Swidler's contention that the PSC is in no position to evaluate an estimated reserve until his staff can get more involved in the planning of the pool, but he says "the terrible de-rating and outage situation on the Con Ed system casts a large question over any reserve estimates presently available."

New York power pool officials freely acknowledge that they are re-evaluating their reserve estimates. Says one top Con Ed official who is also a pool official, "I think every power pool in the country is reviewing its reserve estimates." He says the "unexpectedly low availability of new large units is certainly trimming our expected reserve margins." "At the other end of the scale," he continues, "some of the old units still counted as 'existing capacity' are actually retiring themselves." The unavailability of installed capacity, largely because of forced outages, is bringing about a widespread re-evaluation of estimated power reserves. Besides the New York pool and the PSC, other agencies reviewing their reserve estimates are PJM, FPC, and the National Electric Reliability Council. "These estimates are a big headache," commented one industry official, "and we are getting to the point where we don't believe anybody's figures."

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Neighboring pools were also running tight when the New York pool pleaded for help on Monday morning. The New England pool, with about 2,000 Mw (of its 13,700 Mw of installed capacity) down because of forced outages or scheduled maintenance and loads inching up near its December peak, joined in the 5% voltage reduction but had no extra capacity to ship south. At 4 p.m. it dropped United Illuminating's Bridgeport-2 on a boiler tube leak. Commented a pool official: "We probably would have had to go to a voltage reduction anyway after the Bridgeport failure, even if we hadn't been trying to assist the New York pool."

To the west, the Pennsylvania-New Jersey-Maryland Interconnection was a little better off, though it had some 13% of its 29,152 Mw of installed capacity down on forced outages and another 10% down for scheduled maintenance, leaving just enough reserve to take care of its own systems. However, it was able to provide transmission capacity to move the 420 Mw from the west to the New York systems.

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